IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.3525 of 2007
[Smt. Manjulabai A. Barai Vs. Gajanan Prasad Sahakari Griha Taran Sanstha Ltd. & ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.R. Patil, Advocate for the petitioner.
Mr. N.S. Badhe, Advocate for respondent no.4.

CORAM : A.H. JOSHI, J.

DATE : 31st October,2007.

1. Heard learned Advocate Mr. Patil for the petitioner and learned Advocate Mr. N.S. Badhe for respondent no.4.

2. The Disputant, who had filed a Dispute under Section 91 of the Maharashtra Co-operative Societies Act seeking a declaration that the disputant is an allottee of suit Tenement No. 23, and was entitled for possession, also prayed for alternate relief by way of damages.

3. During pendency of Dispute, the Society executed sale-deed in favour of present petitioner. The disputant then applied for amendment of Dispute, which was granted, and he has prayed for the relief, in addition to the

prayers already contained in the dispute, which reads as follows:-

> **3. Direct the Opponent No.1 Society and the concerned persons to execute and registered the sale deed, at its cost, in respect of the suit tenements No. 23 along with plot, in favour of the disputant within stipulated time, as these disputant has already deposited the amount for registration of the sale deed with the society.**
>
> **4. Declare that the sale executed by the opponent No.1 Society during the pendency of the proceeding, in favour of opponent No.4, in respect of the suit tenements No.23, as illegal, unauthorised, without any authority and not binding on the disputant, and consequently cancel the same.**

4. The present petitioner's defence for opposing the dispute is that allotment in favour of disputant is cancelled by Society's order dated 20th August, 1990 [Annex.J to the petition].

5. The Appellate Court has dealt with the issue as to effect of direction [Annex.J], holding that it was without any resolution of the Society and without following due procedure.

6. On facts, the Appellate Court found that the Tenement No. 23 was, in fact, allotted to the disputant. Having held that the disputant was the allottee and cancellation of said

allotment and later execution of sale-deed in favour of present petitioner was contrary to earlier allotment, the Appellate Court reversed the Judgment of the Trial Court and granted the order directing the respondent no.1 and original opponent present petitioner to execute a sale-deed of the suit tenement No. 23 along with the plot in favour of the disputant and to deliver possession.

7. Though this Judgment is challenged in this petition, it is not shown as to how the finding of fact recorded by the First Appellate Court is erroneous.

8. Present is a Writ Petition filed under Articles 226 and 227 of the Constitution of India. For all purposes, the challenge raised before this Court is as to the appreciation of evidence where the Writ jurisdiction cannot be converted into a third trial or appeal in disguise.

9. In absence of error of jurisdiction, or such other grounds, no interference is called for.

10. Writ Petition is, therefore, dismissed.

Judge

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